

MINUTES
IOWA COMPREHENSIVE PETROLEUM UNDERGROUND STORAGE TANK FUND
PROGRAM

January 25, 2008

COMMISSIONER'S CONFERENCE ROOM
IOWA INSURANCE DIVISION, 330 EAST MAPLE STREET
DES MOINES, IOWA

Susan Voss, Chairperson, called the Iowa UST Board meeting to order at 10:18 A.M. A quorum was present. Roll call was taken with the following Board members present:

Jacqueline Johnson (via telephone)
Nancy Lincoln
Doug Beech (via telephone)
Stephen Larson (for Michael Fitzgerald)
Jim Holcomb

Also present were:

David Steward, Attorney General's Office
Tim Benton, Attorney General's Office
Scott Scheidel, Program Administrator
Lacey Skalicky, Program Administrator's Office
James Gastineau, Program Administrator's Office
Rochelle Cardinale, Iowa Department of Natural Resources
Tim Hall, Iowa Department of Natural Resources

APPROVAL OF PRIOR BOARD MINUTES

The minutes from the October 25, 2007 Board meeting were reviewed. Mr. Larson moved to approve the minutes, Ms. Lincoln seconded the motion, and by a vote of 6-0, the minutes were approved.

CLOSED SESSION

Ms. Voss noted there were matters dealing with litigation for discussion in closed session pursuant to Iowa Code Chapter 21. The Board members entered into closed session at 10:20 AM, and the session ended at 10:35 AM. Mr. Holcomb made a motion to approve the settlement offer to Coastal Mart for \$2.1M to settle claims to be paid over the period of two fiscal years. Mr. Larson seconded the motion, and a roll call vote was held resulting in all ayes. Approved 6-0.

PUBLIC COMMENT

Ms. Voss requested any comments from the public present. There were no public comments made at this time.

BOARD ISSUES

A. Legislative Update

Mr. Scheidel presented a memo to the Board regarding items of interest at the State Capitol early in the 2008 Legislative Session. He noted that the Governor's budget recommendations were released and they suggested additional spending of 6-9% over the previous year. Mr. Scheidel explained that revenue estimates show continued growth, however new tax increases could be expected to cover some of the shortfall between revenue and new spending. He expected Legislators to add their priorities to the discussion and notified the Board that the Iowa UST Fund might be tapped by to fill any holes in the budget by the time Session ends.

Mr. Scheidel stated that there were no early bills filed that would have significant impact on the Board. He noted that a group of stakeholders had met after the Environmental Protection Commission (EPC) action on revising the RBCA Tier 2 model to discuss the changes made in the rule filing that fell outside of the recommendations of the software investigation committee (SIC), as well as other RBCA changes that might make sense. Therefore the potential existed that the stakeholders might propose statute changes to address the RBCA rule, which they would most likely present to the Board for either support or direction to move forward if anything materializes.

B. FY 2008 Goals Quarterly Update

Mr. Scheidel presented to the Board the informational item regarding the progress of the Board's fiscal year 2008 goals as the 2nd quarter of the fiscal year ended. He explained that the Program had closed 86 claims since July 1, 2007 (52% to the goal), and representatives from the Administrator's Office had attended 63 corrective action meetings (63% to the goal) with Fund claimants, their consultants, and Department of Natural Resources (DNR) staff. Regarding the use of loss portfolio transfers, Mr. Scheidel stated that Petroleum Marketers Management Insurance Company (PMMIC) had inquired if the Board would be open to a transfer of 293 sites, thereby definitively ending the Board's liabilities for those sites. PMMIC representatives had been working on a written proposal to present to the Board, but had not presented anything over concerns of confidentiality. Next, Mr. Scheidel noted that DNR had not taken any action or requested a meeting for discussion of plastic water lines after Mr. Gastineau's suggestions stated in September. He did reveal that DNR had new guidance in place to address claimants who refuse to close abandoned private water wells timely. Lastly, Mr. Scheidel updated the board regarding their goal of changing the rule based on the SIC recommendations for the RBCA T2 model. He explained that DNR staff had moved forward with the notice of the RBCA T2 model change, as well as, additional items in rule to the EPC in January. He summarized the goal by

stating that the process was moving forward, however the rule itself was not consistent with the SIC recommendations.

C. Transfer of Funds from Revenue Fund to Unassigned Revenue Fund

Mr. Scheidel presented a letter from State Treasurer Michael Fitzgerald recommending the Board transfer the remaining balance of \$7,726,384.37 in the Revenue Fund to the Unassigned Revenue Fund, now that the debt service had been met. State Treasurer Fitzgerald recommended a similar transfer of funds twice per year following bond payments. Ms. Johnson moved to approve the transfer of funds totaling \$7,726,384.37 from the Revenue Fund to the Unassigned Revenue Fund, and Mr. Holcomb seconded the motion, which was approved by a vote of 5-0. Mr. Larson abstained from the discussion and the vote.

D. Loss Portfolio Transfer Discussion

Mr. Scheidel provided the Board with a memo from PMMIC in the Board packet discussing a possible loss portfolio transfer (LPT) of claims from the Board to PMMIC. Tom Norris addressed the Board regarding the memo he provided for the Board packet. He offered to answer any questions Board members had about the memo. He stated that PMMIC's concern regarding the confidentiality issue was the reason he had yet to provide a formal, written proposal, as PMMIC didn't want to be in the position of negotiating against itself. He said that he didn't believe that any other entity would be interested in the referenced group of claims; however he was at the meeting to ask the Board to consider a confidentiality issue for the same reasons that the LPT of last spring was negotiated.

Mr. Larson suggested the Board issue a Request for Information (RFI) to solicit interest from other entities in a loss portfolio transfer of claims. Receipt of proposals, to include limited information about interested entities, would address the Board's question of whether or not other interested parties existed and might respond to a competitive bid request. He also suggested an RFI be issued on a limited timeline of 30-60 days, so that if no other parties were interested, then the Board could decide it may be impractical to subject the potential portfolio transfer PMMIC would like to discuss to a competitive bid and move forward to see if a transfer beneficial to the Board could be reached.

Mr. Norris inquired if the Board would group the same set of claims as the set that PMMIC had proposed interest in, and if so, why that same set? Ms. Voss stated the RFI should be more general than offering a particular set of claims for consideration. Mr. Norris also wanted to know where the RFI would be posted. Mr. Larson responded that the Board could do a mailing to potentially interested parties, and Ms. Voss stated the RFI could be posted in the Bulletin or other industry sites.

In response to Mr. Norris' question about the grouping of claims, Mr. Scheidel suggested that the Board could group together the same set of claims for an RFP, simply based on the fact that the potential transfer of that set of claims had been driven by the PMMIC offer to seek competitive bids. He said that if the transfer of claims' liabilities had been driven by the Board, they would most likely come up with a different set, however the notion had not been Board-driven, so it

would be unlikely to happen unless the Board required bidding to meet statutory requirements. He offered that the RFI could state that the Board had been approached with an offer for 293 specific claims; however Ms. Voss suggested the RFI be more general, rather than suggesting a particular set of claims was to be transferred.

Mr. Norris mentioned that it was stated within the memo in the Board packet that some UST claim sites that were insured by PMMIC were being examined to see if they might have new releases, in which case, these sites would be in a similar situation as those transferred to PMMIC in the previous LPT of last year. They might end up being shared sites, in the sense that the Board would pay to remediate an old release while PMMIC would pay to remediate a new release. Therefore, the Board and PMMIC would again negotiate their share of each sites' contamination and split the costs of the remediation of each accordingly. Mr. Norris explained in the memo that the Board had previously determined it impractical to seek additional bids with regard to such sites in the previous LPT.

Mr. Scheidel stated that the RFI potentially could be approved at the February Board meeting for issuance, and could request responses within 30-60 days. Ms. Lincoln inquired about the site owners' understanding of the waivers and agreements that claimants would be required to sign and how that would work with such a large number of claimants. Mr. Scheidel explained that it would be more difficult to get all claimants to sign a waiver, and the Board would have to discuss options on how to handle the cessation of its liability. He stated that the offerer might have to provide some indemnification to the Board for certain claims filed against it as one option, but it would be up to the will of the Board.

Mr. Holcomb inquired about the goal of the RFI. Mr. Steward explained that the Board would be requesting whether any entity would be interested in a transfer of liabilities from the Board. And Mr. Scheidel explained that the RFI would communicate to the public that the Board was open to considering such transfers.

Mr. Norris stated that the original intent of the UST Fund legislation was to benefit the state and preserve its rural distribution network. To that end, he explained that the LPT proposed by PMMIC would ensure that the money intended to remediate UST sites, specifically operating facilities, would be used to remediate those sites, and the possibility of a reappropriation of funds would be avoided.

Mr. Scheidel offered to draft the RFI with Mr. Steward for presentation to the Board at the next meeting. Ms. Lincoln inquired if now was the right time for the Board to look at LPT's or if it would be more beneficial to do so later. Mr. Scheidel explained that the LPT was the one way to end the Board's responsibility to its claimants. Although the funding of the Program ended in 2016, the Board's liabilities had no expiration date. Therefore, the cessation of any liabilities would be a step in the right direction, as LPT's provide the Board with finality. The RFI would give the Board a checkpoint to see if the time is right or not. The RFI would not necessarily result in any transaction.

Ms. Voss inquired if the Board was in agreement with regard to Mr. Scheidel and Mr. Steward drafting a RFI for the next meeting, and they were. Also, Mr. Larson opined that if Mr. Scheidel

were to find, through the process of drafting the RFI, that it would be impractical to take this additional step, then he should present his reasons why to the Board to allow for a timely response to PMMIC's offer.

E. UST Removal Rule Status

Mr. Scheidel provided the Board with a Notice of Intended Action for the removal of underground storage tanks (UST's) for Board approval. Mr. Scheidel noted that the rule in question was emergency-filed and also noticed at the end of last summer to allow for immediate reimbursement for tank removal at sites, and no public comment had been received during the open public comment period for that notice. However, he stated that representatives from DNR and PMMIC had comments after the comment period had expired. In October, the Board had voted to adopt the UST removal rules as noticed. He said that a representative from PMMIC attended the following Administrative Rules Committee (ARC) meeting, where the adoption of the rule was considered, and the committee put a hold on the rule, instructing the parties to work out the difference. The issue was the use of a new word—disqualified—in the sub rule. Mr. Scheidel worked with Mr. Steward to draft the amendments before the Board; PMMIC was in agreement with them. Mr. Scheidel stated that he met again with the ARC a week and a half ago, and he presented them with a new rule, which was also included in the Board packet today. He said that he told the ARC that he couldn't go ahead with the Notice of the new rule without first seeking Board approval. The ARC was comfortable with the agreement between the PMMIC representative and Mr. Scheidel and took no further action, with the understanding that the sub rule would be amended.

He explained that in addition to the comment by PMMIC, he attempted to amend the rule to accommodate DNR's comment. The proposed amendments to the rule remove the word disqualified to address the comment by PMMIC. Additionally, the proposed rule simplifies the process for a claim where the owner and the claimant may not be the same entity because of property transfers over time. Also the amended rule allows the Board to limit the cost of a claim for removal to the cost that would be paid under any Board contract for such activity. The amended version allows the Board to reimburse to remove tanks at sites that had a claim in good standing, received NFA certificate and then perhaps lost Financial Responsibility—these would represent a significant issue for IDNR since timely removal of the tank can preserve the ability to make a claim under their pollution insurance. Lastly, it makes reference to what the Board already does in removing tanks for the IDNR under its closure contract.

Mr. Beech inquired about PMMIC's concern with the current rule. Mr. Scheidel explained that PMMIC wanted the word "disqualified" removed from the rule. Mr. Beech stated his concern with regard to the claimants who had entered into a LPT last spring, and whether they would be eligible for reimbursement from the UST Fund under this new rule. Mr. Scheidel stated that none of those claimants had applied for tank pull reimbursement to date, and if they were to do so, the Board would have to weigh the language in the rule against the language in the agreements and waivers entered into with regard to the LPT, the same as any other settlement agreements.

Mr. Holcomb requested a comparison of the current rule with the new rule. Mr. Scheidel stated he would send the Board members copies of both rules to compare via electronic mail.

Mr. Larson moved to approve the rule language and notice the rule before the Administrative Rules Committee (ARC). Mr. Holcomb seconded the motion, which was approved by a vote of 6-0.

F. SIC Model (RBCA) Rule Status

Mr. Scheidel explained the status of the rule that was filed by the DNR regarding the risk based corrective action (RBCA) model. He advised the Board that DNR took the rule to the Environmental Protection Commission (EPC) for a third time for notice. He reminded the Board that the software investigation committee (SIC) had recommended the DNR recalibrate the model within the RBCA software based on their discussions over the past nearly two years. The DNR subsequently added additional items to the rule to address a variety of departmental concerns without any stakeholder involvement. The resulting rule, was scheduled for notice at the EPC meeting in October, but was met with significant public comment from stakeholders and SIC members prior to the meeting, and therefore was pulled from the agenda and not discussed. The DNR altered the rule, which was put on the November agenda for the EPC as an item for information only. He stated that meetings were held between DNR staff and stakeholders about the content of the rule. DNR again revised the rule. Mr. Scheidel said the rule was not limited to SIC recommendations, nor did it address all stakeholders' concerns. The rule was noticed at the December EPC meeting, and it was currently in a public comment period.

G. DNR Update

Tim Hall from the Department of Natural Resources (DNR) addressed the Board about a restructuring of Bureaus at the DNR. Brian Tormey would be Bureau Chief in charge of the UST and LUST sections in conjunction with contaminated sites and landfills. Mr. Hall was moving to a primarily non-regulatory bureau including watershed, water resources, and geology, involving more Earth science and compilation of data to provide technical assistance to other Department bureaus.

Mr. Hall addressed the RBCA rule noticed by the DNR. He pointed out that there were many other stakeholders in this rule than merely UST stakeholders, as the rule could affect the interests of rural water associations and public water supply entities, who were also involved in the discussions with DNR. He wanted the Board to be aware of DNR's efforts to balance the rule between the interests of both UST owners and operators and water supply entities. Additionally, he stated that although some items addressed in the rule seemed ancillary to SIC members and UST stakeholders, the DNR staff felt the items were absolutely relevant to the RBCA process and to the rule. He invited the public to provide comment in writing to the EPC or at the public hearings to be held March 4, 5, & 6, 2008.

Mr. Beech provided two comments. He stated his concern about the DNR's decision to resist making modeled plumes more realistic, as those plumes had been determined to be several times overly-conservative based on the analysis of actual historical data. Mr. Hall replied that DNR had addressed the overly-conservative nature of the model by implementing the SIC

recommendation to recalibrate the model within the rule. However, he explained that the model would have some shortcomings in special instances where certain receptors were at additional risk. Therefore, the DNR addressed those special instances by including language in the rule to provide for additional analysis of the risks to those certain receptors. He confirmed that the extra analysis would be an exception to the model rather than the rule of thumb. Mr. Scheidel explained that the DNR had put into the rule very broad and generalized criteria that would allow each DNR project manager to require additional data to assess the risk of a site at great cost to the owner, and possibly the Board. He had previously suggested to the DNR that they include exception language stating that if they see evidence in the assessment data, then they should seek additional data, after building a case for the exception... He stated that DNR's approach may or may not be overly burdensome as it gives great authority without any checks. The ultimate cost would rely on how each project manager decided to use the authority. In either event the number of sites that were purported to be the basis has been a very small number in the program to date. Mr. Hall responded that he felt the DNR staff would proceed responsibly with regard to using the RBCA model. Mr. Scheidel explained that each DNR project manager might use the rule completely differently, leaving the potential costs at a site very difficult to predict.

Mr. Beech also inquired about the standard of free product recovery (FPR) at a particular site. He explained that a DNR project manager had advised Casey's of a new standard for FPR at sites, where previously monthly hand bailing had been the accepted method. Mr. Beech stated he had discussed the change in policy with Dave Wornson, DNR counsel, however he wondered how the DNR planned to notify site owners and operators, as well as Board members, about the policy change. Rochelle Cardinale from the DNR addressed the question, stating she was unaware of a new FPR policy change; however she noted that project managers may require more active methods, if the amount of free product warranted it. She explained that there was no set policy of FPR for every site that required it, as it would often depend on numerous site-specific conditions. Mr. Beech inquired about diesel fuel, and she confirmed that hand bailing was used often for diesel because it was heavier than gasoline, so it didn't typically spread as far as quickly. Again she deferred to site conditions, including soil type, and she suggested that larger volumes of free product might be better served with more aggressive methods of FPR.

With regard to the RBCA rule noticed by the DNR, Ms. Cardinale concurred with Mr. Hall's belief that DNR staff would not over-use their authority to seek additional assessment data where the newly calibrated model would show it to be unwarranted. She agreed that DNR staff felt the authority should be expressed in rule for the benefit of the sites that were real exceptions to the model.

Ms. Voss commented that the rule could include phrasing, "it is the intent of this rule to..." She indicated that her department used the phrase at times, so that it would be noted in rule that the exception wording was not to be used excessively, but rather exceptionally.

Ms. Cardinale wanted the Board to be aware of the vertical component of contamination at certain sites due to receptors like high-volume pumping wells, and she noted that the RBCA model only addressed site assessment in two dimensions. Mr. Scheidel noted that the rule did not mention high-volume pumping wells, and therefore indicated that the rule language may be

too broad for stakeholders' comfort. Ms. Cardinale repeated that the DNR welcomed public comment at the hearings to follow in Denison, Iowa City and Des Moines.

Next, Ms. Cardinale provided Board members with a handout regarding an evaluation of corrective action conferences. The handout showed that 478 sites had been included in the corrective action meeting process, resulting in signed memoranda of agreement (MOA) on 325 sites. She noted that 134 sites were resolved without the need for signed MOA, and 17 sites awaited additional meetings. Also, she explained that most sites (80%) were involved in the implementation of the activities agreed upon in the meetings, however some (29) had been reclassified to Low Risk and some (10) had been recommended for reclassification to Low Risk. Additionally, she stated that 47 sites were classified no action required (NAR), and 8 sites were recommended for reclassification to NAR.

Additionally, Ms. Cardinale showed the breakdown of corrective action strategies including almost 36% of sites implementing expedited corrective action methods, approximately 33% taking a Tier 3 approach, and just over 31% implementing a remediation system. She also noted some changes to the conference process, as meetings would be needed as follow-up for remediation system evaluation, testing and modifications required at some sites. Also, meetings would be held on low risk sites to move them toward NAR. She mentioned that DNR staff reductions had left fewer managers available for conferences. But also, she stated the back log of high risk sites awaiting a corrective action plan had been significantly reduced, and the remaining sites involved recalcitrant parties, funding problems, and other complex issues.

PROGRAM BILLINGS

Mr. Scheidel presented the current monthly billings to the Board for approval.

1. Aon Risk Services\$117,120.00
Consulting Services – December 2007 (\$64,536.00)
Claims Processing Services – December 2007 (\$52,584.00)
2. Aon Risk Services.....\$122,726.00
Consulting Services – January 2008 (\$57,513.00)
Claims Processing Services – January 2008 (\$55,213.00)
3. Aon Risk Services.....\$122,726.00
Consulting Services – January 2008 (\$57,513.00)
Claims Processing Services – January 2008 (\$55,213.00)
4. Attorney General's Office.....\$9,503.33
Services provided for October 2007
5. Attorney General's Office.....\$9,503.49
Services provided for November 2007
6. Attorney General's Office.....\$15,001.40
Services provided for December 2007

7. Iowa Department of Inspections & Appeals\$253.50
Administrative hearings on behalf of the Iowa UST Program
July – September 2007
8. Iowa Department of Inspections & Appeals\$1,922.38
Administrative hearings on behalf of the Iowa UST Program
October – December 2007
9. Iowa Department of Revenue\$988.38
Environmental Protection Charge collections
October - December 2007

No additional billings for outside cost recovery counsel were presented by the Attorney General's office for this meeting. On a motion by Mr. Holcomb and a second by Ms. Lincoln, the billings were approved by a vote of 6-0.

MONTHLY ACTIVITY REPORT

Mr. Scheidel noted that the October, November and December activity reports, financials and opt-in reports were in the Board packets for the Board members to review. Ms. Voss requested a copy of the information sent to legislators each year for her reference.

ATTORNEY GENERAL'S REPORT

Mr. Steward stated he had nothing to report to the Board at this time.

CLAIM AUTHORITY

Mr. Gastineau presented the following claim authority requests:

1. Site Registration 8601178 – Six W. Ampride, Inc.

This site was low risk with free product. Previous authority to \$75,000 had been granted, and \$81,599.47 was incurred to date. Additional authority to \$115,000 was requested for a site monitoring report (SMR) and continued free product recovery (FPR).

A motion to approve the claim authority was submitted by Mr. Holcomb and seconded by Ms. Lincoln. Approved 6-0.

2. Site Registration 8710744 – Seaton's Jack & Jill, Brooklyn

This site was classified high risk for groundwater vapor to enclosed space for a residential sewer and non-residential basement and for soil vapor to the residential sewer. Vapor sampling had failed. A multi-phase extraction system was being proposed and would be operated for an anticipated time period of three years. Previous authority to \$75,000 had been granted, and

\$48,511.38 was incurred to date. Additional authority to \$309,000 was requested for a SMR, corrective action design report (CADR) and implementation of the CADR.

Mr. Holcomb submitted a motion to approve the claim authority, and Ms. Johnson seconded the motion. Approved 6-0.

3. Site Registration 8607914 – Louisa County, Oakville

This was a third Board report for a site classified high risk for the groundwater to plastic water line pathway, and low risk for the groundwater to protected groundwater source pathway and soil vapor to enclosed space pathway. A replacement municipal well had been installed in 2007, and the existing high risk water well was to be plugged. However, the new well was installed with plastic water lines running through the simulated plume. Additionally, the Mayor of Oakville had issued a complaint about the new well. Mr. Gastineau explained that he had informed the DNR, the groundwater professional and the engineer about the Mayor's concerns. The remaining pathways might be addressed through monitoring only. Previous authority to \$385,000 had been granted, and \$375,978.04 was incurred to date. Additional authority to \$460,000 was requested for a SMR and implementation of the drinking water well plugging.

Mr. Holcomb submitted a motion to approve the claim authority, and Ms. Lincoln seconded the motion, which was approved 6-0.

CONTRACTS ENTERED INTO SINCE THE OCTOBER 25, 2007 BOARD MEETING

Mr. Scheidel noted that the Board had entered into two new contract extensions for community remediation projects (CRP's).

- 1) The Conesville CRP contract with Seneca Environmental was extended for one year with no additional funding.
- 2) The Chelsea CRP contract with Trileaf Corporation was extended for one year with additional funding approval to \$250,000 total for the project.

OTHER ISSUES

Mr. Gastineau brought up the American Water Works Foundation water line report. He stated the report had been released, and the DNR had a copy. He anticipated the DNR might soon have a response to the issue he had raised in September with regard to the plastic water line pathway. Mr. Hall concurred stating that he believed the DNR staff would request a meeting to discuss the findings of the study with the Fund Administrator's Office staff and interested parties, once all had time to review the report. Mr. Scheidel expressed concern about the amount of time expended between reviewing the report and implementation of an agreed upon policy with regard to plastic water lines, based on the timeline of the RBCA rule process. Mr. Hall stated that the DNR was not interested in an extensively long review time on the issue.

Due to scheduling conflicts the next Board meeting, scheduled for Friday, February 22nd, was re-scheduled for Friday, February 29th at 10 A.M.

CORRESPONDENCE AND ATTACHMENTS

Ms. Voss asked if there was any further business, and there being none, Ms. Lincoln moved to adjourn, and Mr. Holcomb seconded the motion. By a vote of 6-0, the Board adjourned at 12:01 P.M.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Scott M. Scheidel". The signature is written in a cursive, flowing style with a large initial 'S'.

Scott M. Scheidel
Administrator